

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

LISA DeNUNZIO BLAIR)	CASE NO. 4:22-cv-01192
)	
Plaintiff)	JUDGE JOHN R. ADAMS
)	
vs.)	
)	
MICHELLE NICOLE FRENCHKO, et al.)	<u>PLAINTIFF'S NOTICE OF POTENTIAL</u>
)	<u>CONFLICT OF INTEREST</u>
Defendants.)	

Now comes Plaintiff Lisa DeNunzio Blair (“Plaintiff”), by and through counsel, pursuant to Ohio Rule of Professional Conduct 1.7, and provides notice of a potential conflict of interest involving Kathleen M. Minahan (“Attorney Minahan”) as counsel for Defendants Michelle Frenchko (“Frenchko”) and/or the Trumbull County Commissioners (the “Commissioners”).¹ The reasons for the notice are as follows:

I. INTRODUCTION

This notice of a potential conflict of interest involving Attorney Minahan from representing Frenchko and the Commissioners is pursuant to Ohio Rules of Professional Conduct 1.7. According to the Rule, an attorney is prohibited from representing a client who asserts a claim against another one of his/her clients. Currently, Frenchko has a pending lawsuit against the Commissioners in the Court of Common Pleas for Trumbull County, Ohio. Therefore, for the reasons explained below, Attorney Minahan has a potential conflict of interest by representing both Defendants.

¹ On April 17, 2023, counsel for Plaintiff contacted Attorney Minahan in attempt to resolve this matter however, such attempts were unsuccessful.

II. FACTS

Plaintiff filed the instant case against Defendants on July 6, 2022. (EFC #1). In her Amended Complaint, Plaintiff alleges claims for (1) ancestry discrimination in violation of Title VII; (2) defamation; and (3) intentional infliction of emotional distress. These claims arise out of Plaintiff's employment as an assistant clerk for the Commissioners. Frenchko, a current Commissioner, is also named in her individual capacity. Since the filing of the Answer on October 3, 2022, Defendants have been jointly represented by Attorney Minahan.

Recently, on March 10, 2023, Frenchko filed a lawsuit against the Commissioners, the County, and certain commissioners and other government officials.² (See Trumbull County Court of Common Pleas Case No. 2023 CV 00412, a copy of the Complaint being attached hereto as Exhibit 1.) In her Complaint, Frenchko seeks injunctive and mandamus relief. Specifically, Frenchko alleges that the other commissioners are violating Ohio's Open Meetings Act, R.C. 121.22, by conducting business and voting on matters in private without her participation. Frenchko therefore seeks an order against the Commissioners that they be enjoined from this practice and all actions taken in violation of the Open Meetings Act be invalidated. Lastly, on April 17, 2023, Frenchko filed an additional lawsuit against the Commissioners for allegedly violating her first, fourth, and fourteenth Amendment Rights. (See local news article *Trumbull Co. Commissioner Files Civil Rights Lawsuit Following July Arrest* attached hereto as Exhibit 2).

III. DISCUSSION

a. Standard of Review

"The ethical standards prescribed by the Ohio Rules of Professional Conduct govern all attorneys practicing before this Court." *Burton v. Cleveland Heights/Univ. Heights Bd. of Educ.*,

² To be clear, Attorney Minahan is not representing Frenchko or the Commissioners in that case.

No. 1:17CV300, 2017 WL 6028211, at *2 (N.D. Ohio Dec. 4, 2017). “A motion to disqualify is the proper method for an opposing party to bring potential breaches of ethical conduct to the court's attention.” *Prey v. Kruse*, No. 2:08 CV 287, 2008 WL 11350337, at *2 (S.D. Ohio July 24, 2008) (quoting *Hamrick v. Union Township*, 81 F. Supp.2d 876, 878 (S.D. Ohio 2000)). “The court has broad discretion in determining whether counsel should be disqualified in ongoing litigation.” *Gould, Inc. v. Mitsui Min. & Smelting Co.*, 738 F. Supp. 1121, 1124 (N.D. Ohio 1990). “In ruling on a motion to disqualify counsel, the court must examine two questions. First, whether the non-moving party's counsel committed an ethical violation and, if so, whether that ethical violation requires disqualification of counsel.” *Cliffs Sales Co. v. Am. S.S. Co.*, No. 1:07-CV-485, 2007 WL 2907323, at *3 (N.D. Ohio Oct. 4, 2007).

b. Attorney Minahan jointly representing all Defendants in this case may violate Rule 1.7 of the Ohio Rules of Professional Conduct

According to Rule 1.7 of The Ohio Rules of Professional Conduct:

- (a) a lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:
 - (1) the representation of that client will be directly adverse to another current client;
 - (2) there is a *substantial* risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

Furthermore, “the representation of one client is directly adverse to another in litigation when one of the lawyer's clients is asserting a claim against another client of the lawyer. *Avon Lake Mun. Utilities Dep't v. Pfizenmayer*, 2008-Ohio-344, ¶ 15 (quoting Ohio Prof. Cond. R. 1.7, Comment 11).

In the present matter, Attorney Minahan represents both Frenchko and the Commissioners as Defendants. However, Frenchko has recently initiated multiple litigation proceedings against

the Commissioners in separate lawsuits wherein their interests are directly adverse. In other words, Attorney Minahan's client, Frenchko, is asserting a direct claim against another one of her clients, the Commissioners. As such, there is at least a substantial risk that Attorney Minahan's joint representation of Defendants in this case will present a conflict of interest as outlined in Rule 1.7 and *Pfizenmayer, supra*.

IV. **CONCLUSION**

For the above reasons, pursuant to Prof. R. 1.7, Plaintiff Lisa DeNunzio Blair provides notice to the Court of the potential conflict of interest of Kathleen Minahan representing Defendants Michelle Frenchko and the Trumbull County Commissioners.

Respectfully submitted,

/s/ Dennis R. Fogarty

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the Court on April 19, 2023. Notice of this filing will be sent by operation of the Court's case management and electronic case filing system. Parties may access this filing through the Court's case management and electronic case filing system.

/s/ Dennis R. Fogarty

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